

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Approved.
IT IS SO ORDERED.

s/ James R. Knepp II
UNITED STATES
DISTRICT JUDGE

OSHAЕ JONES,

Plaintiff,

v.

CITY OF TOLEDO, et al.,

Defendants.

CASE NO. 3:23-CV-1492

JUDGE JAMES R. KNEPP II

**PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR
VOLUNTARY DISMISSAL PURSUANT TO FED. R. CIV. P 41(a)(2)**

Now comes Plaintiff Oshae Jones, by and through counsel, and pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, moves for voluntary dismissal of this action. This motion comes pursuant to Plaintiff’s decision to remove the federal claims from this lawsuit and continue forward on the state law claims only.

I. Argument

Rule 41(a)(2) Standard. Federal Rule of Civil Procedure 41(a)(2) provides in pertinent part, that “... an action shall not be dismissed at the plaintiff’s instance save upon order of the court and upon such terms and conditions as the court deems proper....Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.” Fed.R.Civ.P. 41(a)(2). Whether a dismissal should be granted under the authority of Rule 41(a)(2) is within the sound discretion of the district court. *Grover by Grover v. Eli Lilly & Co.*, 33 F.3d 716, 718 (6th Cir.1994); *Banque de Depots v. National Bank of Detroit*, 491 F.2d 753, 757 (6th Cir.1974). *Roe v. Mahoning Cnty., Ohio*, No. 4:05CV635, 2006 WL 2334834, at *1 (N.D. Ohio Aug. 10, 2006).

The primary purpose of the rule in interposing the requirement of court approval is to protect the nonmovant from unfair treatment. *Grover*, 33 F.3d at 718; *see also Langley v. DaimlerChrysler Corp.*, 407 F.Supp.2d 897, 905 (D.Ohio 2005) (denying a motion to dismiss where the defendant had conducted discovery and filed a motion for summary judgment and the Plaintiff gave no explanation for her request to dismiss). It is an abuse of discretion to grant such a dismissal if defendant would suffer “plain legal prejudice” as a result of a dismissal without prejudice, as opposed to facing the mere prospect of a second lawsuit. *Cone v. West Virginia Pulp & Paper Co.*, 330 U.S. 212, 217, 91 L.Ed. 849,

67 S.Ct. 752 (1947); *Grover*, 33 F.3d 716 at 718 (citing *Cone*). In determining whether a defendant will suffer plain legal prejudice, a court should consider (1) the defendant's effort and expense of preparation for trial, (2) excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action, (3) insufficient explanation for the need to take a dismissal, and (4) whether a motion for summary judgment has been filed by the defendant. *Grover*, 33 F.3d 716 at 718. *Roe v. Mahoning Cnty.*, Ohio, No. 4:05CV635, 2006 WL 2334834, at *1–2 (N.D. Ohio Aug. 10, 2006).

In this case, Defendants will not suffer any legal prejudice from Plaintiff's dismissal. Defendants have not had to prepare for trial or engage in extensive discovery to this point, there has been no delay on Plaintiff's part, and Plaintiff is moving for this voluntary dismissal in order to engage in a more efficient discovery process on more limited claims. No dispositive motions have been filed in this matter. Because the dismissal of Plaintiff's claims will not result in legal prejudice to Defendants, the court should grant Plaintiff's motion.

II. Conclusion

For the foregoing reasons, Plaintiff prays this Court grants their Motion for Voluntary Dismissal pursuant to Rule 41(a)(2).

Respectfully submitted,

/s/ Sean L. Walton

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CERTIFICATE OF SERVICE

This is to certify that the foregoing was filed electronically this 29th day of March 2024. Notice of this filing will be sent to all counsel by operation of the Court's electronic filing system, as certified by the Court's Certificate of Service generated upon filing.

/s/ Sean L. Walton

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Attorney for Plaintiff